IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 295 OF 2002.

Mr. Narayan P.S. Kuncolienkar,
r/of Mardol, Ponda. ... Petitioner.

Versus

1. The Goa Urban Co-operative Bank Limited, registered under the Maharashtra Co-operative Societies Act, 1960 as applied to the State of Goa, having its Registered Office near Church Square, Dr. Atmaram Borkar Road, Panaji.
2. The Hon'ble Presiding Officer, Industrial Tribunal, Government of Goa, Junta House, Second Floor, Panaji.
3. State of Goa represented through its Chief Secretary, having his Office at Secretariat, Panaji. ... Respondents.

Mr. A.V. Nigalye, Advocate for the Petitioner.

Mr. G. Sardessai, Advocate for the Respondent No. 1.

Mr. N. Sawaikar, Addl. Govt. Advocate for the Respondent No. 3.

Coram: P.V. HARDAS, J.

Date: 17th October 2002.

ORAL JUDGMENT.

Rule. By consent, Rule made returnable forthwith.

2. The present petition takes exception to the Order passed by the Industrial Tribunal at Panaji, dated 30th July 2002, in Reference No. IT/26/96, whereby the learned Presiding Officer of the Industrial Tribunal had

dismissed the application dated 3rd August 2001, at Exhibit 17, filed by the present petitioner. The present petitioner had filed the aforesaid application praying that the present respondent no. 1 be not permitted to lead evidence and for passing an Award ordering the reinstatement of the petitioner with full back wages and continuity in service.

3. The Government of Goa, by its Order dated 17th May 1996, had referred the dispute regarding the termination of services of the petitioner for adjudication to the Tribunal. The petitioner had filed his statement of claim at Exhibit 5 and the respondent no. 1/employer had filed its written statement. On the basis of the pleadings, the learned Presiding Officer of the Industrial Tribunal had framed two issues relating to the fairness of the inquiry conducted against the petitioner herein and whether the charges of misconduct against the petitioner were proved in the inquiry. The parties led evidence and the Tribunal by its findings dated 6th January 1999 held that the inquiry conducted against the petitioner herein was not fair and proper and, therefore, was set aside. Since the inquiry was set aside, the issue whether the charges of misconduct had been proved against the petitioner did not arise for consideration. Thereafter, an additional issue was framed whether the respondent no. 1 herein proves that

the petitioner herein is guilty of the charges of misconduct. In respect of the additional issue, the respondent no. 1 herein examined its witness. However, when the examination-in-chief was partly recorded, the petitioner herein filed an application at Exhibit 15, praying that the respondent no. 1 herein be not permitted to lead evidence.

4. The respondent no. 1 herein had filed an application for amendment of its written statement on 9th November 1998 and by virtue of the amendment had reserved its right to lead evidence in the event the inquiry was set aside. This amendment was sought prior to the Order by which the learned Presiding Officer of the Industrial Tribunal had set aside the inquiry. The effect of an amendment is that it relates back to the date of filing. The Order of the Industrial Tribunal permitting the respondent no. 1 herein to amend his written statement was not challenged by the petitioner herein. Even in the present petition, no relief is sought for quashing the Order of the Industrial Tribunal by which it permitted the respondent no. 1 herein to amend its written statement. At paragraph 7 of the impugned Judgment, the learned Tribunal held that the respondent no. 1 herein had sought permission to lead evidence by amending its written statement. The amendment application was not objected to by the

petitioner herein and the same was allowed by Order dated 9th November 1998. Thus, the Tribunal held that the permission was sought by the respondent no. 1 much before setting aside the inquiry. The additional issue was framed on 21st January 1999 and the same was not objected to by the petitioner herein. The evidence on behalf of the respondent no. 1 was partly recorded and it is at that stage that the petitioner herein had objected to the respondent no. 1 leading evidence. In these circumstances, therefore, the learned Tribunal dismissed the application dated 3rd August 2001 at Exhibit 17, filed by the petitioner herein.

5. Mr. Nigalye, the learned counsel appearing on behalf of the petitioner, has urged before me that initially when the respondent no. 1 had filed its written statement, the respondent no. 1 had not sought permission to lead evidence in the event the inquiry was set aside. This was done only via an amendment application, which the Tribunal had allowed. Therefore, according to him, the respondent no. 1 cannot be permitted to lead evidence at this stage.

6. With the assistance of the learned counsel appearing for the parties, I have perused the Order impugned in the present petition and the reasons given by the learned Tribunal for permitting the respondent

no. 1 herein to lead evidence cannot be faulted with. An amendment application seeking to amend the written statement had been filed by the respondent no. 1 before the Tribunal decided on the fairness of the inquiry proceedings. The amendment was not objected to by the petitioner and even the framing of the additional issue was not objected to. The respondent no. 1 has commenced the evidence. In such circumstances, according to me, the petitioner has not made out any case for interference with the Order of the learned Member of the Industrial Tribunal. The learned Member of the Industrial Tribunal has given reasons for dismissing the application filed by the present petitioner and the reasons cannot be faulted with. Thus, I see no merit in the petition and the petition deserves to be dismissed.

7. In the result, therefore, the Writ Petition is dismissed. Rule, accordingly, discharged with no order as to costs.

(P.V. HARDAS)
JUDGE.

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